IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 206 OF 2004

Bhimsh Pirappa Chikne (since decd.)
through L.Rs... .. .. Appellants.
Versus
Pratap Krishnatrao Ingle. .. ... Respondent.

Mr. M. A. Utagikar for the Appellants.
Mr.Surel S. Shah for the Respondent.

CORAM : ANOOP V. MOHTA, J.

DATED : 17TH NOVEMBER, 2005.

P.C.:

Both the Courts below have come to the conclusion that the plaintiff proved his title and ownership of the land CTS No. 2776 which is situated at Akkalkot, Dist. Solapur and the defendants made encroachment about 35 sq. mtrs. on the land CTS No. 2776 and the defendants failed to prove their title over the suit portion by virtue of adverse possession.

2. Learned Counsel appearing for the appellant/ defendant basically contended that no title of ownership over the suit portion of the property can be decided without the foundation of sale deed or any such document. Both the courts, however, in the

present suit gave a finding in favour of the plaintiff / respondent based on the material available on record about his title and ownership.

3. Learned Counsel for the respondent / plaintiff rightly contended that the appellant is claiming adverse possession. Any way, without going into the controversy at this prima facie stage, both the courts have come to the conclusion based on the material available on record and I see no reason to interfere with the same. There is no substantial question of law as such raised in this second appeal. Second appeal is, accordingly, rejected.

4. Learned Counsel for the appellants / defendants, however, requested for some time to vacate the premises as they are in possession since last 25 years. Learned Counsel for the respondent fairly conceded to the request. Considering the facts and circumstances of the case, the appellants / defendants are granted six months time to vacate the suit premises on the basis of an usual undertaking to be filed by the appellants / defendants and all adult members of the family residing in the suit premises within four weeks from today in the trial court.

Failing to file such undertaking by the appellant / defendant within the aforesaid time, the respondent / plaintiff shall be entitled to take appropriate steps to take possession of the suit premises.

Sd/-

(ANOOP V. MOHTA, J.)